

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.66 OF 2004

Hiriadka Nagesh Rao

...Appellant

Vs.

Vivek Abrol and another

...Respondents

Ms Neeta Karnik for the Appellant

Ms Purnima Bhatia for Respondent No.1

CORAM: A.S.OKA, J.

DATED: JANUARY 10, 2005.

P.C.:

1. By the impugned order dated 10th December 2003, Notice of Motion taken out by the Appellant/Plaintiff has been dismissed.

2. The prayers made in the Notice of Motion read thus :

"(a) Pending the hearing and final disposal of this suit this Hon'ble Court be pleased to restrain defendant No.1 his servants, agents or any person claiming through them by an order of temporary injunction from carrying at any further construction of the 15 feet wall behind the side window of the plaintiff's gala situated at outside gala No.1, Pandav Industries, M.P.Jain Compound, Behind Parekh apartment, Rajeja Township, Maland (East), Mumbai 400 097.

(b) Pending the hearing and final disposal of this suit this

Hon'ble Court be pleased to restrain defendant No.1 his servants, agents or any person claiming through them by an order of temporary injunction from obstructing the Plaintiff's right to light and air through the sole window situated at east side gala No.1, Pandav Industries, M.P.Jain Compound, Behind Parekh Apartment, Raheja Township, Malad (East), Mumbai 400 097."

3. The learned Counsel for Respondent No.1 states that the construction of wall in dispute is already completed.

4. In view of this statement, no purpose will be served by keeping the Appeal pending as the prohibitory injunction sought by the Appellant in the Notice of Motion cannot be granted now. It will be for the Appellant to take out appropriate proceedings if so advised.

5. The learned Counsel for the Appellant made grievance about certain findings recorded by the learned Trial Judge while dismissing the Notice of Motion. Obviously, the said findings are only tentative findings for considering the prayer for interim relief. Such findings are not binding on the learned Trial Judge while deciding the main suit.

6. Subject to observations made above, Appeal is dismissed with no order as to costs.

Judge.